REMARKS

This response is intended as a full and complete response to the final Office Action mailed May 16, 2006. In the Office Action, the Examiner notes that claims 1-4, 6-12, 14-54, and 56 are pending and rejected. By this response, all claims continue unamended.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

Applicants' attorney thanks the Examiner for taking the time to discuss this application on July 11, 2006. Further to that discussion, Applicants' attorney provides the response herein. As discussed in the interview, the Examiner desires further clarification of the term "constrain" as used in, for example, claim 1 and the distinction between the term "constrain" and the term "terminate" as used in, for example, claim 6. Discussion on this subject is provided below along with a full response to the action.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

REJECTIONS

35 U.S.C. §103

Claims 1-4, 6-12, and 14-22, 26-54, and 56

The Examiner has rejected claims 1-4, 6-12, and 14-22, 26-54, and 56 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,128,601 to Van Horne et al. (hereinafter "Van Horne") in view of U.S. Patent Publication US2002/0019875 to Garrett et al. (hereinafter "Garrett") and in view of U.S. Patent 6,363,053 to Schuster et al. (hereinafter "Schuster"). Applicants respectfully traverse the rejection.

The Examiner is respectfully directed to Applicants' previous discussions of the various references. In brief, Van Horne discloses a system enabling a service provider

to monitor client usage of network services such that usage beyond an agreed-upon amount may be used to capture additional revenues. Schuster discloses a system enabling a client to test whether actual quality of service (QoS) of a network conforms to a contractual QoS conformance parameter of a service level agreement (SLA).

The cited references, either singly or in any operable combination, fail to disclose or suggest at least the step of (per claim 1):

> "constraining client device usage according to said negotiated network usage terms, said client device usage being measured as two or more of an amount of data received, an amount of data transmitted and an elapsed time."

The Examiner cites several portions of Van Horne as teaching the above claim element. Applicants respectfully disagree. Van Horne discloses an arrangement in which a service provider meters the usage of a network by a client such that the client billing for system use may be adapted in response to actual use (see, e.g., column 4, lines 38-43). That is, rather than constraining system use, Van Horne allows whatever use the client wishes and, if necessary, adapts the monetary charge billed to the client if the use exceeds some agreed-upon amount. This is entirely unlike the claimed invention.

The Schuster reference also fails to teach the above claim element. Schuster provides conformance testing of a network. Specifically, Schuster discloses periodic testing of quality of service (QoS) characteristics of a network to determine if actual QoS characteristics of the network conformed to QoS characteristics delineated within a service level agreement (SLA). Where the tested QoS characteristics do not meet the SLA requirements, the monetary charge paid by the client under the SLA is reduced. This is entirely unlike the claimed invention.

Garrett is irrelevant to the discussion of the above claim element.

Therefore, Van Horne, Garrett and Schuster singly and in combination fail to teach or suggest Applicants' invention as a whole.

As such, independent claims 1 and 53 fully satisfy the requirements of 35 U.S.C. §103 and are patentable over Van Horne, Garrett and Schuster. Furthermore, claims 2-4, 6-12, 14-22, 26-52, 54 and 56 depend directly or indirectly from independent claims 1 and 53 and recite additional features thereof. Accordingly, for at least the

same reasons as discussed above, Applicants submit that these dependent claims also fully satisfy the requirements of 35 U.S.C. §103 and are patentable over Van Horne, Garrett and Schuster. Thus, Applicants respectfully submit that the Examiner's rejection of claims 1-4, 6-12 and 14-22, 26-54 and 56 should be withdrawn.

Claims 23-25

The Examiner has rejected claims 23-25 under 35 U.S.C. §103(a) as being unpatentable over Van Horne in view of Garrett and in view of Schuster as applied to claim 1 and further in view of U.S. Patent 6,023,499 to Mansey et al. (hereinafter "Mansey").

The rejection applies only to dependent claims and is predicated on the validity of the rejection of its respective independent claim. Since the rejection of its respective independent claim has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that any additional reference supplies that which is missing from Van Horne, Garrett and Schuster to render the independent claims unpatentable, these grounds of rejection cannot be maintained.

Discussion of the term "constraining."

During the Examiner interview of July 11 the Examiner requested clarification of the term "constraining." Applicants note that this term refers to a reduction or termination of service in response to a usage parameter reaching a soft or hard limit.

The Webster's online dictionary definition is provided below.

Merriam-Webster Online Dictionary

Thesaurus

constrain
One entry found for **constrain**.

Main Entry: **con·strain**
Pronunciation: k&n-'strAn
Function: *transitive verb*
Etymology: Middle English, from Anglo-French *constraindre,* from Latin *constringere* to constrict, constrain, from *com-* + *stringere* to draw tight -- more at STRAIN
1 a : to force by imposed stricture, restriction, or limitation **b** : to restrict the motion of (a mechanical body) to a particular mode
2 : COMPRESS; *also* : to clasp tightly
3 : to secure by or as if by bonds : CONFINE; *broadly* : LIMIT
4 : to force or produce in an unnatural or strained manner <a *constrained* smile>
5 : to hold back by or as if by force <*constraining* my mind not to wander from the task – Charles Dickens>
synonym see FORCE
- con·strained·ly /-'strA-n&d-lE, -'strAnd-lE/
adverb

In essence, the term "constraining client device usage according to said negotiated network usage terms" as used in claim 1 is intended to positively claim a limiting or restriction of the usage of network services by a user. This may be implemented by, for example, suspending the service until an additional understanding or payment is agreed to, by terminating the service altogether or by other means (see, e.g., page 23, lines 1-25 of the instant patent application). Thus, "terminating a contract" is only one of a plurality of actions that would operate to "constrain" usage.

It is noted that the cited references, as discussed above, do not constrain, restrict, limit or otherwise limit client device usage; rather, they merely monitor usage or periodically check conformance to a QoS requirement and adjust a back end billing

process in response. Usage continues in each case. Specifically, though a client may have to ultimately pay more (or less) for the usage, the client is not constrained in the usage of network resources in the cited references.

THE SECONDARY REFERENCES

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

CONCLUSION

Thus, Applicants submit that all of the claims presently in the application are non-obvious and patentable under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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